

Remarks

Claims 1-8 remain pending in the application, Claim 1 being the sole independent claim. Reconsideration and allowance of these claims is respectfully requested.

Rejection of Claims Under 35 U.S.C. §103(a)

Claims 1-8 were rejected under 35 USC 103 as being unpatentable over McKittrick '627 in view of Hagaman et al '234. McKittrick '627 shows a garden tool having a handle that is "securely and permanently attached to frame member by welding." Column 4, lines 27-28.

With respect to Claim 1 in the present application, McKittrick '627 therefore teaches away from a handle means being pivotally coupled to the frame.

Examiner has therefore applied the reference of Hagaman et al. '234 as prior art in combination with McKittrick '627. Applicant submits that Hageman et al. '235 is non-analogous art as against the presently claimed invention, and should therefore not be used in combination with McKittrick '627.

A two part test is used to determine whether a reference may act as prior art against a claimed invention. In re Deminski, 796 F.2d 436, 230 USPQ 313 (Fed. Cir. 1986). First, it must be determined whether the reference is within the field of the inventor's endeavor. Second,

assuming the reference is outside that field, it must be decided whether the reference is reasonably pertinent to the particular problem with which the inventor was involved. Id.

Applicant first submits that Hagaman et al. '234 is not within the field of the inventor's endeavor. Applicant provides a hand tool having an ergonomic design, which involves a pivotally coupled handle for ease of storage and replacement thereof, Page 2, lines 25-32. Hagaman et al. '234 relates to a wire fence having stays and runners connected by locks, Column 1, lines 8-11. It can safely be said that the fence lock of Hagaman et al. '234 does not fall within the field of hand tools, in accordance with the present invention. At issue next is whether Hagaman et al. '234 is pertinent, even though it is not in the same field.

A reference is reasonably pertinent if, even though it may be in a different field from that of the inventor's endeavor, it is one which, because of the matter with which it deals, logically would have commended itself to an inventor's attention in considering the problem. In re Clay, 966 F.2d 656, 23 USPQ2d 1058 (Fed. Cir. 1992).

Examiner has cited Hagaman et al. '234 with reference to the pivoting aspect of the handle of the present

invention. As recited in Claim 1, the handle means is pivotally coupled to the frame. At issue is whether Hagaman et al. '234 teaches a pivotally coupling mechanism useful in the apparatus of the present invention. The portion of Hagaman et al. '234 cited by the Examiner as being applicable to the presently claimed invention is referred to as a lock, wherein the lock does not pivotally couple, but instead "secures" the intersecting runners and stays, Column 1, lines 34-39. This difference is further evidenced by the fact that the lock includes a locking arm that is crimped so as to secure the wires against movement, Column 2, lines 82-84. This is contrary to the objective of the pivotally couplable means of the present invention. Thus, where applicant has designed a pivotally couplable handle, a lock that is not pivotally couplable would not be pertinent art in such an endeavor.

For this reason, Hagaman et al. '234 is believed to be non-analogous art as against the presently claimed invention.

Moreover, Applicant submits that there is no suggestion or motivation to combine the teachings of Hagaman et al. '234 with that of McKittrick '627.

There must be some reason, suggestion or motivation found in the prior art whereby a person of ordinary skill

in the field of the invention would make the combination. That knowledge cannot come from the applicant's invention itself. In re Oetiker, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992).

As discussed with regards to the above cited references, McKittrick '627 suggests and provides motivation only for a handle that is securely and permanently attached to the frame member, Column 4, lines 27-28, and conversely does not provide motivation or suggestion of a pivotally coupled handle.

Hagaman et al. '234 likewise teaches away from a pivotal coupling where it provides a lock for a fence having a clamping arm or jaw that is bent to lock intersecting portions of a fence together (Column 1, lines 69-71). The fence arrangement shown fails to indicate a pivotal coupling corresponding to that presently claimed, and further suggests a means to fixedly secure the fence stays and runners to one another. Hagaman et al. '234 therefore also teaches away from, and does not suggest the present invention.

Applicant further traverses Examiner's assessment of the prior art regarding Claim 7, wherein McKittrick '627 provides a handle means and implement each fixed in a first direction, whereas Claim 7 is directed towards a handle

means extending in a second direction opposite the first direction of the implement.

As such, the rejection of pending Claim 1 should be removed. Where claims 2-8 are dependent from Claim 1, it is submitted that they are now allowable for the same reasons discussed with reference to Claim 1, above. Accordingly, the claim rejections under 35 U.S.C. §103(a) should be withdrawn.

For the foregoing reasons, Applicant respectfully submits that the claims as presented are believed to be unobvious and patentable over the cited references, whether taken alone or in combination. The presently pending claims are therefore allowable on the merits. An early allowance is respectfully solicited.

Respectfully submitted,

HAUGEN LAW FIRM PLLP



Christopher G. Frank
Reg. #52,910
Attorney for Applicant
1130 TCF Tower
121 South Eighth Street
Minneapolis, MN 55402
Phone: (612) 339-8300